



## **ARIZONA BOARD OF FINGERPRINTING**

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### **Final Minutes for Public Meeting**

Held September 7, 2007, at 8:30 a.m.  
3839 North 3rd Street, Suite 107, Phoenix, Arizona

#### **Board Members**

Mike LeHew, Department of Economic Security, Chair  
Kim Pipersburgh, Department of Health Services, Vice Chair  
Rand Rosenbaum, Administrative Office of the Courts  
Charles Easaw, Department of Education  
Arthur W. Baker, Department of Juvenile Corrections

#### **Executive Director**

Dennis Seavers

### **CALL TO ORDER AND ROLL CALL**

Mr. LeHew called the meeting to order at 8:43 a.m. The following Board members were present: Mike LeHew, Kim Pipersburgh, Rand Rosenbaum, Charles Easaw, and Arthur W. Baker. No Board members were absent.

Also in attendance was Dennis Seavers, Executive Director.

### **CALL TO THE PUBLIC**

Mr. LeHew made a call to the public. There were no members of the public present.

## **APPROVAL OF MINUTES**

Mr. Seavers noted that he inadvertently listed the April 20, 2007 meeting minutes rather than the August 24, 2007 meeting minutes on the agenda. Without objection from the Board members, Mr. LeHew tabled approval of the August 24, 2007 draft meeting minutes until a later meeting.

## **ADOPTION OF PROPOSED RULES**

Mr. Seavers referred the Board members to the proposed rules that would implement time frames and that included other, minor changes. He explained that the Board normally would seek public comment. However, in order to have the rules in place by the time the statutory time frames become effective on September 19, 2007, he said that the Board would need to adopt rules without the usual period for public comments. He noted that he would solicit public comments and convey any comments to the Board. The Board could then consider these comments and make any rule changes necessary to incorporate concerns by members of the public.

Mr. Baker made a motion to adopt the proposed rules, and Ms. Pipersburgh seconded. The motion passed, 5–0.

Mr. Seavers reported that he would file the rules with the Secretary of State's Office on or before September 19.

## **ELECTIONS FOR CHAIRPERSON AND VICE-CHAIRPERSON**

Mr. Seavers noted that under A.R.S. § 41–619.53(B), the Board must annually elect a chairperson and vice-chairperson, as well as any other officers the Board wishes.

Mr. LeHew called for nominations for chairperson and vice-chairperson. Mr. LeHew nominated Charles Easaw as chairperson. Ms. Pipersburgh nominated Mr. LeHew as chairperson. Mr. LeHew nominated Kim Pipersburgh as vice-chairperson. Mr. Baker nominated Mr. LeHew as vice-chairperson. Mr. Rosenbaum nominated Mr. Baker as vice-chairperson.

Without objection from the Board members, Mr. LeHew asked the members to cast a single, secret ballot for both chairperson and vice-chairperson. Mr. LeHew asked Mr. Seavers to tabulate the ballots and report to the Board.

Mr. Seavers reported that Mr. Easaw was elected as chairperson and Ms. Pipersburgh was elected as vice-chairperson.

## **ADJOURNMENT**

Mr. Baker made a motion to adjourn the meeting, and Ms. Pipersburgh seconded. The motion passed, 5–0. Mr. LeHew adjourned the meeting at 9:25 a.m.

Minutes approved on November 2, 2007

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Dennis Seavers, Executive Director

### **A.A.C. R13-11-101. Applicability**

This Article applies to activities and persons identified in A.R.S. Title 41, Chapter 3, Article 12, except that R13-11-111 applies to all persons applying to the Department of Public Safety for a fingerprint clearance card ~~pursuant to~~ UNDER A.R.S. § 41-1758.03.

### **A.A.C. R13-11-102. Definitions**

In this Article, the following definitions apply, unless the context otherwise requires:

1. "Appellant" means a person whose application for a fingerprint clearance card is denied or whose fingerprint clearance card is suspended by the Department; who is eligible to request a good cause exception from the Board ~~pursuant to~~ UNDER A.R.S. § 41-1758.03; and who submits a request ~~pursuant to~~ ACCORDING TO R13-11-103(A).
2. "'Applicant" means a person who applies for a fingerprint clearance card ~~pursuant to~~ UNDER A.R.S. § 41-1758.03.
3. "APPLICATION" MEANS ALL OF THE DOCUMENTS REQUIRED BY A.A.C. R13-11-104(A).
- 3 4. "Board" means the Board of Fingerprinting.
- 4 5. "Department" means the Department of Public Safety.
- 5 6. "Department's notice" means the notice of denial or suspension of a fingerprint clearance card that the Department sends to an applicant ~~pursuant to~~ UNDER A.R.S. § 41-1758.04.
- 6 7. "Expedited review" means an examination, in accordance with Board rules, of the documents an appellant submits by the Board or its hearing officer without the appellant being present.
- 7 8. "Good cause exception" means the issuance of a fingerprint clearance card to an appellant ~~pursuant to~~ UNDER A.R.S. § 41-619.55.
- 8 9. "Hearing officer" means an administrative law judge or other person ~~hired~~ APPOINTED by the Board, ~~or if an agreement exists between the Board and the Office of Administrative Hearings, appointed by the director of the Office of Administrative Hearings,~~ to determine good cause exceptions.
9. ~~"Office" means the Office of Administrative Hearings.~~
10. "Request" means a person's written indication to the Board that he or she wishes to appeal for a good cause exception ~~pursuant to~~ UNDER A.R.S. § 41-619.55, along with a copy of all pages of the Department's notice. A person's dated signature on the Department's notice shall suffice as a written indication.

### **A.A.C. R13-11-103. Request for good cause exception**

- A. A person who meets the requirements of A.R.S. § 41-1758.03 and wishes to apply for a good cause exception shall submit a request to the Board within 30 calendar days of the date on the Department's notice.
- B. The Board shall send an application package within five business days to an applicant if one of the following applies:
  1. The applicant meets the requirement of R13-11-103(A).

2. With good cause, the applicant submits a request in excess of 30 calendar days of the date on the Department's notice. An applicant demonstrates good cause by showing that the request could not have been submitted on time, using reasonable diligence. An applicant's failure to inform the Department of a change in address shall not constitute grounds for good cause. The Board's executive director shall determine whether good cause exists.
3. The applicant submits an incomplete request within 30 days of the Department's notice and subsequently completes the request. The Board shall determine a request incomplete if the request lacks one of the following:
  - a. A written indication that the applicant wishes to appeal for a good cause exception pursuant to UNDER A.R.S. § 41-619.55, or
  - b. The Department's notice or any of its pages.
- C. Within five business days, the Board shall send a notice to an applicant who submits an incomplete request. The notice shall indicate that the request is incomplete and what elements of the request are missing.
- D. The Board shall reject an applicant's request for a good cause exception and send a written notice of rejection within five business days if one of the following applies:
  1. The applicant submits a request in excess of 30 days of the date on the Department's notice, except as provided for in R13-11-103(B)(2).
  2. R13-11-103(B) notwithstanding, the applicant is not eligible to request a good cause exception under A.R.S. § 41-1758.03.

#### **A.A.C. R13-11-104. Good Cause Exception Application**

- A. ~~An appellant shall submit the following materials to the Board to establish good cause for an exception~~ AN APPLICATION SHALL CONSIST OF BOTH THE CRIMINAL HISTORY INFORMATION PROVIDED BY THE DEPARTMENT AND THE FOLLOWING MATERIALS SUBMITTED BY AN APPELLANT TO THE BOARD TO ESTABLISH GOOD CAUSE FOR AN EXCEPTION:
  1. The good cause exception application form prescribed by the Board. This form shall be notarized.
  2. Two letters of reference on forms prescribed by the Board that meet the following requirements:
    - a. Both letters of reference shall be from individuals who have known the appellant for at least one year; and
    - b. At least one letter of reference shall be from the appellant's current or former employer or from an individual who has known the appellant for at least three years.
  3. If the Department's notice indicates that the Department could not determine the disposition of a charge, documents from the appropriate court showing the disposition of the charge or showing that records pertaining to the appellant either do not exist or have been purged.
  4. For any ~~arrests~~ CHARGES that occurred five years or less prior to the date on the Department's notice, regardless of whether the ~~arrests~~ CHARGES were listed on the Department's notice, the police report for each ~~arrest~~ CHARGE

and documents from the appropriate court showing the disposition of the charge.

5. For every criminal conviction, regardless of whether the offenses were listed on the Department's notice, documents from the appropriate court showing that the appellant has met all judicially imposed obligations or sentencing conditions or that records pertaining to the appellant either do not exist or have been purged. If the appellant has not met all judicially imposed obligations or sentencing conditions, the appellant shall provide a written statement indicating or documents from the appropriate court showing the status of the appellant's efforts toward meeting the obligations.
  6. A statement written by the appellant that explains each ~~arrest~~ CHARGE, regardless of whether the ~~arrests~~ CHARGES were listed on the Department's notice.
- B. The Board OR ITS HEARING OFFICER ~~shall~~ MAY accept any other documents an appellant submits to demonstrate good cause for an exception, CONSISTENT WITH A.R.S. § 41-1062.
- ~~C. A good cause exception application shall be complete if it meets all the requirements of R13-11-104(A). A good cause exception application shall be incomplete if it does not meet all the requirements of R13-11-104(A).~~

#### **A.A.C. R13-11-105. Expedited Review**

- A. Within ~~30~~ 20 business days of receiving a AN ~~complete~~ application package, the Board or its hearing officer shall conduct an expedited review. When determining whether the appellant should receive a good cause exception under an expedited review, the Board or its hearing officer shall consider the following:
1. The criteria listed in R13-11-108(A); and
  2. Whether the documentation submitted in support of a good cause exception is sufficient to allow the Board or its hearing officer to grant a good cause exception, or whether the Board or its hearing officer require further documentation or oral testimony.
- B. If the Board or its hearing officer ~~determine~~ DETERMINES that the appellant is eligible for a good cause exception under an expedited review, the Board or its hearing officer shall grant the appellant a good cause exception.
- C. If the Board or its hearing officer determines that an appellant is not eligible for a good cause exception under an expedited review, the Board or its hearing officer shall direct the Board's executive director to schedule, ~~or request that the Office schedule,~~ a hearing and inform the appellant of the determination in writing. The Board's executive director shall give the appellant reasonable notice of the hearing in accordance with ~~the provisions of~~ A.R.S. § 41-1061. THE HEARING SHALL TAKE PLACE WITHIN 45 DAYS AFTER THE EXPEDITED REVIEW.

#### **R13-11-108. Hearings**

- A. When determining whether an appellant should receive a good cause exception at a hearing, the Board or its hearing officer shall consider whether the appellant has shown

to the Board or its hearing officer's satisfaction that the appellant is not awaiting trial on or has not been convicted of committing any of the offenses listed in A.R.S. § 41-1758.03 or that the person is successfully rehabilitated and is not a recidivist. The Board or its hearing officer shall consider the following:

1. The extent of the appellant's criminal record;
  2. The length of time that has elapsed since the offense was committed;
  3. The nature of the offense;
  4. Any applicable mitigating circumstances;
  5. The degree to which the appellant participated in the offense; and
  6. The extent of the appellant's rehabilitation, including:
    - a. Completion of or progress toward completing probation, parole, or community supervision;
    - b. Completion of payment or progress toward paying restitution or other compensation for the offense;
    - c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling;
    - d. Personal references attesting to the appellant's rehabilitation; and
    - e. Witness testimony ~~that the appellant submits.~~
- B. Absent good cause, if the appellant or his or her representative fail to appear at a hearing, the Board or its hearing officer ~~shall proceed with the hearing and~~ MAY deny the applicant a good cause exception for failure to appear at the hearing. An appellant demonstrates good cause by showing that the appellant could not have been present at the hearing or requested that the hearing be rescheduled pursuant to R13-11-106, using reasonable diligence. An appellant's failure to inform the Board of a change in address shall not constitute grounds for good cause. The Board or its hearing officer shall determine whether good cause exists.
- C. THE BOARD OR ITS HEARING OFFICER SHALL GRANT OR DENY A GOOD CAUSE EXCEPTION WITHIN 80 DAYS OF THE HEARING.

#### **R13-11-110. Rehearing or Review of Decision**

- A. An appellant may seek a review or rehearing of a Board OR HEARING-OFFICER decision that results from an administrative hearing by submitting a written request for a review or rehearing to the Board within 30 days from the date of service of the decision. The Board OR ITS HEARING OFFICER ~~must~~ SHALL grant a request for review or rehearing for any of the following reasons materially affecting the rights of the appellant:
1. The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
  2. The appellant was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;
  3. Newly discovered material evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier; or
  4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.

- B. The request must specify the grounds for a review or rehearing and must provide reasonable evidence that the appellant's rights were materially affected.
- C. The Board OR ITS HEARING OFFICER may grant a rehearing or review for any of the reasons in subsection A. The Board or its hearing officer may take additional testimony; amend or make new findings of fact and conclusions of law; and affirm, modify, or reverse the original decision.
- D. A rehearing or review, if granted, must be a rehearing or review only of the issue upon which the decision is found erroneous. An order granting or denying a rehearing or review must specify the basis for the order.

**R13-11-111. Notification of Decision for Good Cause Exception**

- A. The Board shall notify the appellant in writing of the ~~Board's~~ BOARD OR ITS HEARING OFFICER'S decision and, ~~if the good cause exception is granted at a hearing,~~ transmit findings of fact and conclusions of law.
- B. When the Board or its hearing officer ~~grant~~ GRANTS a good cause exception, the Board's executive director shall request, in writing, the Department to issue a fingerprint clearance card.